IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4271 of 2000
AND
SPECIAL CIVIL APPLICATIONS NOS. 1189, 4494, 4659, 5934
AND 7476 ALL OF 1998

with

Civil Applications No.10818 and 12557 both of 1999
in
Special Civil Application No.4494 of 1998

with

Civil Application No. 8879 of 1999
in
Civil Application No. 7269 of 1999
in
Special Civil Application No.1189 of 1998

with

Civil Applications No.10816 and 12559 both of 1999
in
Special Civil Application No. 4659 of 1998

with

Civil Application No.2167 and 10812 both of 1999
in
Special Civil Application No. 7476 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD GREEN BELT KHEDUT MANDAL

Versus

STATE OF GUJARAT, THROUGH SECRETARY

Appearance:

sca 4271/ 2000 Mr Raja Ramchandran with MR CC BHALJA for Petitioners
Mr. S.N.Shelat, AAG with AJ Desai AGP for Respondent No. 1
MR NV ANJARIA for Respondent No. 2

sca 1189/ 1998 Mr.Raja Ramchandran with Mr.YNOza for petitioner
Mr.SN Shelat, AAG with AJDesai AGP for State

sca 4494&4659/ 1998 Mr SH Sanjanwala with RS Sanjanwala for pet.
MR PG Desai GP for R 1 and 2
Mr.SN Shelat, AAG with AJ Desai AGP for State

sca 5934/ 1998 Mr AJ Patel for petitioner
Mr.SN Shelat, AAG with AJ Desai AGP for State

sca 7476/ 1998 Mr.SH Sanjanwala with RH Sanjanwala for pet.
Mr SN Shelat, AAG with AJ Desai AGP for State

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision:24/11/2000

COMMON C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This petition under Article 226 of the Constitution had been preferred by an Association of Land Owners within the development area of Ahmedabad Development Authority. This petition shall also decide the group of other petitions mentioned above as common questions of law arise for decision.

#. The petitioners challenge the constitutional validity of the provisions of Section 12 of the Gujarat Town Planning and Urban Development (Amendment) Act, 1999 (Gujarat Act No. 2 of 1999), whereby amongst other provisions, amendment has been introduced by substituting impugned clause (jj) in subsection (3) of Section 40 of the parent Act, i.e., The Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to shortly as `the parent Act' and the `Amendment Act' respectively). The parent Act of 1976 in the State of Gujarat is successor to the Bombay Town Planning Act of 1954 which was applicable to the new State of Gujarat. The Preamble of the parent Act indicates, the object of the Act to be one enacted `to consolidate and amend the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat'. It is a State legislation and the source of legislative power is derived from Entry 18 of State List and Entry 20 of the Concurrent List.

#. For appreciating and weighing the worth of grounds urged for challenging the impugned legislation, a brief survey of the provisions of the parent Act and the Amendment Act would be necessary. The broad features of the parent Act are: Chapter II contains the provisions for creation of larger area of development defined as "development area" and for constitution of `Area Development Authorities' for the purpose of development. The main functions of the Area Development Authority under Section 7 are amongst others to undertake preparation of development plans for the `Development Area' and for preparation and execution of `town planning schemes'. Section 12 of the parent Act describe various proposals and reservations to be made in the development plan to be approved by the State Government. Subsection (2) of Section 20 enables reservation of lands for residential, industrial, commercial, agricultural and recreational purposes, land to be reserved for community facilities and services and for other public purposes. Section 20 of the parent Act which is very material for the purposes of this group of petitions is a provision enabling acquisition of land by the Development Authority for any of the public purposes specifically mentioned in certain clauses of subsection (2) of Section 12. The land designated and reserved for public purposes is required to be acquired under an agreement with the land owners or under the provisions of Land Acquisition Act. Subsection (2) of Section 20 provides that lands for development can be acquired within 10 years from coming into force of final development plan, or within six

months of notice served by the land owner or person interested. Non-acquisition within the stipulated time has the legal effect of dereservation of the land designated for a specific purpose. Section 20 being relevant for considering the merits of the grounds urged in this petition, is required to be reproduced in full:

"Sec. 20. Acquisition of land.

(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the land Acquisition Act, 1894 (I) of 1894.

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 (i) of 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed."

#. At this stage, it may be necessary to mention that the scope and meaning of Section 20 of the Act came for consideration before this Court before Division Bench (D.M. Dharmadhikari, C.J. and J.M. Panchal, J) of which one of us, namely, D.M. Dharmadhikari, C.J. was a party in a group of petitions decided with Special Civil Application No. 3537 of 1995 Palitana Sugar Mills Private Ltd. Vs. State of Gujarat. The judgment in that case is being delivered today along with this group of petitions. The Division Bench of this Court in the group petitions of Palitana Sugar Mills Private Limited interpreted the provisions of Section 20 of the Act in the light of the scheme and other provisions of the Act and came to the conclusion against the contention of the State that by mere issuance of a revised development plan under Section 21 of the Act, the legal effect of dereservation of designated land for the public purposes under the development plan on failure of acquisition within 10 years and despite service of six months notice, is not nullified.

#. Chapter V of the parent Act contains the provision regarding town planning schemes. Section 40 under Chapter V of the Act enables the Appropriate Authority to prepare town planning schemes in accordance with the final development plan. Subsection (3) of Section 40 is also an enabling provision for the Authorities to undertake various development plans in the town planning schemes e.g. levelling the land for carving out plots, earmarking lands for roads, open spaces, gardens, allotting land for public purposes, such as lighting, water supply and other ancillary matters relating to the town planning. Original clause (jj) in subsection (3) of Section 40, prior to its substitution by the impugned amendment by Gujarat Act No. 2 of 1999, which was introduced by Gujarat Amendment Act No. 4 of 1986, reads as under:

"40(3)(jj) as it stood on insertion by Gujarat Act of 1986 before its substitution by Gujarat Act No. 2 of 1999:-

(3) A town planning scheme may make provision for any of the following matters:

(a) to (i) and (j) xx xxx xx xxx xx

(jj) The allotment of land to the extent of 10% or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of sale for residential, commercial or industrial use"

By the Gujarat Act No. 2 of 1999, the impugned clause (jj)(a)(i) to (iv) with proviso thereunder has been substituted for the original clause (jj) and the amendment reads as under:-

"(jj)(a) The allotment of land from the total area covered under a scheme, to the extent of -

(i) 15% for roads,

(ii) 5% for parks, playgrounds, gardens and open spaces,

(ii) 5% for social infrastructure such as schools, dispensary, fire brigade, public utility place as earmarked in the draft town planning scheme,

(iv) 15% for sale by Appropriate Authority for residential, commercial or industrial use depending upon the nature of development,

provided that the percentage of the allotment of land specified in paragraphs (i) to (iii) may be

altered depending upon the nature of development and for the reasons to be recorded in writing.

(b) The proceeds from the sale referred to in paragraph (iv) of subclause (a) shall be used for the purpose of providing infrastructural facilities.

(c) The land allotted for the purposes referred to in paragraphs (ii) and (iv) of subclause (a) shall not be changed by variation of schemes for the purposes other than the public purpose."

The other provisions of the parent Act shall be dealt with while considering the various grounds urged to challenge the impugned legislation.

#. Learned counsel, who appeared for the petitioners in this group of petitions, separately addressed this Court at great length. The main ground of challenge is that the impugned legislation is an ill-conceived legislative device to again reserve the same area or land which automatically stood dereserved because of its non-acquisition within the stipulated period under subsection (2) of Section 20 of the Act being a provision regarding the development plan.

#. The ancillary ground urged is that the land which was not acquired on payment of compensation under Section 20 of the Act cannot again be acquired indirectly and without payment of compensation by introducing the impugned legislation to enable the Appropriate Authority to prepare a town planning scheme and reserve the land at the specified percentage for public purposes like roads, parks, playgrounds, gardens and open spaces. It is submitted that the impugned legislation is inconsistent with the remaining provisions of the Act. It is an attempt to acquire property by framing scheme without payment of compensation under the Land Acquisition Act. It amounts to enacting an unreasonable law resulting in deprivation of the property of the land owners contrary to the constitutional right guaranteed under Article 300A of the Constitution.

#. The most serious objection commonly raised by the learned counsel on behalf of the petitioners is to subclause (iv) of clause (jj)(a) of subsection (2) of Section 40, which enables the Appropriate Authority in making a town planning scheme to reserve 15% of the land within the scheme to be utilised for sale by the Appropriate Authority for residential, commercial or industrial use. The submission made on behalf of the petitioners is that such provision of reservation of land

to be sold by the Appropriate Authority for raising the money for the purpose of providing infrastructural facilities is a provision which is beyond the legislative competence of the State and falls outside the Entry 18 of the State List or Entry 20 of the Concurrent List. The provision is severely criticized by stating that there is an attempt to add to the funds of the Appropriate Authority under the Act from the properties belonging to the petitioners. It is submitted that in the garb of planning and preparation of town planning schemes, money making projects cannot be allowed to be undertaken with the help of properties of citizens. It is submitted that town planning or urban development does not permit acquisition of certain percentage of properties of citizens for its disposal in the hands of public Authorities for the purpose of raising its funds, may be, for use of those funds for further development. It is submitted that the funds of Appropriate Authority are those mentioned in Section 91 and sale proceeds of certain percentage of land acquired from land owners do not constitute the legitimate funds of the Appropriate Authority as provided in Section 91. It is submitted that compensation payable under Section 82 of the parent Act in respect of property or right injuriously affected by the scheme, on the basis of market value obtaining on the date of declaration of intention to make a scheme, is not an adequate compensation. The compensation which the citizens would otherwise be entitled to be awarded is in accordance with the Land Acquisition Act. It is submitted that right to property is no longer a fundamental right under Article 19, but, it continues to be a constitutional right under Article 300A of the Constitution. Article 300A prohibits the State from depriving the citizen of his right to property "save by authority of law". The authority of law, it is argued, mentioned under Article 300A of the Constitution, means by authority of law which is reasonable. It is argued that the impugned piece of legislation is the misconceived law enacted to deprive the land owners of their right to property without payment of compensation in accordance with Land Acquisition Act. The scheme framed is not consistent with the provisions of the parent Act and cannot be said to be valid and reasonable law.

#. Some other ancillary points urged on behalf of the petitioners by one of the counsel arguing for them also deserve to be noted. It is pointed out that under the parent Act, Section 40(3)(j) as it original stood merely provided for only 10% of the land to be reserved in the town planning scheme for providing housing accommodation

to members of the weaker sections. That provision contained in clause (j) is still on the statute book. As mentioned above, clause (jj) was introduced by Gujarat Act No. 4 of 1986. After its introduction, the two clauses (j) and (jj) as stood prior to their substitution by (jj)(a)(i) to (v), (b) and (c) read as under:-

"40(3) A town planning scheme may make provision for any of the following matters, namely:-

(a) to (i) xx xx xx xx xx xx

(j) the reservation of land to the extent of ten per cent; or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of providing housing accommodation to the members of weaker sections and of buildings actually used for religious purposes;

(jj)the allotment of land to the extent of ten per cent, or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of sale for residential, commercial or industrial use;

##. As quoted above, prior to the impugned amendment and substitution of clause (jj)(a) to subsection (3) of Section 40 the Appropriate Authorities were permitted at the time of framing town planning scheme to reserve land total to the extent of 20%, i.e., 10% for housing accommodation for weaker sections and 10% for the purpose of sale. The sale of plots was not permitted to be made by the Appropriate Authority in the unamended clause (jj)(a), may be, the sale of the plots in contemplation was through the land owners under the scheme.

##. The learned counsel appearing in Special Civil Application No. 4271 of 2000 has urged an additional ground that the State Government in these petitions has not shown any justification in their reply affidavit for increasing the percentage of reservation of lands for public use from 20% to 50%. The percentage of reservation now provided under the town planning scheme is as under:

10% for weaker sections - (j)
15% for roads - (jj)(a)(i)
5% for park, playgrounds, gardens and open spaces (jj)(a)(ii)
5% for social infrastructure such as schools, dispensary, fire brigade, public utility places as earmarked in draft town planning scheme (jj(a)(iii)

15% for sale by appropriate authority for residential accommodation, commercial and industrial use (jj)

50% Total

##. It is submitted that the State has not been able to justify in its reply affidavit the increase of percentage of reservation to the extent of 50%. The reservation of land for the town planning scheme to the extent of 50% is, therefore, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is submitted that such high percentage of reservation is liable to be struck down on the ground that reservation whatsoever made in the development plan has lapsed under Section 20 of the Act because of non-acquisition of the land by agreement or on payment of compensation under acquisition Act to the land owners.

##. The other ancillary grounds urged is that the State in its reply has agreed for its liability to pay compensation for the land reserved on the market value of the land as obtaining on 21-1-1999 being the date of publication of declaration of intention by the Appropriate Authority to frame the town planning scheme in accordance with Section 82 of the parent Act. The argument advanced is that although Article 300A does not require that the law resulting in deprivation of property should provide for payment of compensation under the Land Acquisition Act, but, compensation payable under a law, which is found reasonable at a given point of time may be found unreasonable and illusory with the long passage of time. It is submitted that the decision to frame town development scheme was taken several years back and payment of compensation at the market price existing on the date of declaration of intention of making the scheme would be highly illusory and unrealistic. The impugned legislation, therefore, cannot be described to be a just, fair and reasonable law, within the meaning of Article 300A.

##. The learned Addl. Advocate General Shri S.N. Shelat, who appeared for the State and the various public authorities in his reply supported the impugned legislation. The stand taken by him will be dealt with by us while considering various grounds of challenges urged on behalf of the petitioners.

I LEGISLATIVE COMPETENCE

##. We shall take up first for our consideration the petitioners challenge to the impugned legislation on the ground of alleged want of legislative competence. The legislative competence of Bombay Town Planning Act, 1954 which is predecessor of the parent Act of 1976 came to be challenged on the basis of legislative competence in the Supreme Court in the case of Maneklal Chhotalal and others v. M.G. Makwana and others AIR 1967 SC 1373. The Supreme Court upheld the legislative competence of the State Legislature under Entry 18 of List II and Entry 20 of List III. Entry 18 of State List II reads:-

"Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

##. An important principle to interpret the Entries is that none of them should be read in a narrow or restricted sense. The "widest possible" and "most liberal" construction is to be put on each Entry and each general word in a Entry should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in it. The justification for this approach is that the Entries set up are on `machinery of government'. They are "heads" or "fields" of legislation and, therefore, `they must be given the widest scope of which their meaning is fairly capable'. (See United Provinces v. Atikabegam AIR 1941 FC 16, Calcutta Gas Co. Vs. West Bengal AIR 1962 SC 1044 and Harakchand vs. India AIR 1970 SC 1453)

##. In Atma Ram v. State of Punjab AIR 1959 SC 519 (at 523) Item 21 of List II of Government of India Act, 1935 which is comparable and almost similar to Entry 18 of List II of the Constitution, came up for construction and interpretation. It was observed :

"As to item 21, `land', the governing word is followed by the rest of the item, which goes on to say, `that is to say', These words introduce the most general concept - `rights in or over land'. `Rights in land' must include general rights like full ownership or leasehold or all such rights. `Rights over land' would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish

a clue for particular matters."

The second relevant Entry 20 in Concurrent List III reads:-

"20. Economic and social planning". In `Principles of Town and Country Planning' by Lewis Keepl, the scope of planning has been stated thus:

"Planning has both social and economic aims. Socially, successful Planning tends to make people's lives happier because it results in a physical environment which conduces to health, which allows convenient and safe passage from place to place which facilitates social intercourse and which has visual attractiveness. The economic results of good Planning also, of course, conduce to increase happiness, but not quite so directly. A proper spatial relationship between the communities in a region and the constituent parts of a town compactness of development, and an efficient arrangement of communication routes all result in human activities being carried on more efficiently and less wastefully, and thus increase wealth"

##. In the case of Maneklal Chhotalal (supra), the Entry 20 has been construed in the light of the activities involved in town and country planning, as understood generally by those in Local Authorities dealing with systematic development and urban and rural areas. The law of town planning aims at fulfilling social and economic objectives. City Planning takes effect largely through operations of Government and requires the application of specialised techniques of survey, analysis, forecast and design. It is in the light of the scope of the aforementioned Entries that we have to consider whether the impugned legislation is within the competence of State Legislature. As has been held by the Supreme Court in the case of Maneklal Chhotalal (supra) Entry 18 of List II and Entry 20 of List III as `Heads of' legislation has to be given widest possible meaning. In Chapter V of the parent Act provisions are made for preparation and implementation of town planning schemes. Under Section 40(3)(c) and (e) a town planning scheme is required to include amongst others the matters mentioned therein, i.e.,lay out of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications; the allotment or reservation of land for roads, open spaces, gardens,

recreation grounds, schools, markets, green-belts, dairies, transport facilities, and public purposes of all kinds. The original Clause (jj), as was inserted by Gujarat Act of 1986, contained a provision for allotment of 10% of land in the scheme or such percentage as near thereto as possible for the purpose of sale for residential, commercial and industrial use. By substituting the impugned provision, i.e., clause (jj)(a)(i) to (iv), there is merely specification of expected percentage of land to be reserved for various purposes already mentioned in the parent Act in subsection (3) clause (c) and (e) (quoted above). In the clauses (c) and (e) of subsection (3) matters which are to be included in the town planning scheme did not contain the expected percentage of land to be allotted for various purposes for public use. What clause (jj)(a)(i) to (iv) provides is to specify the expected percentages of land which can be allotted in the scheme for various public purposes, like roads, parks, play grounds, gardens, schools, dispensary and other purposes. The most serious objection taken is to subclause (iv) of clause (jj)(a)(iv) which permits 15% of land to be reserved for sale by Appropriate Authority for residential commercial and industrial use.

##. So far as legislative competence is concerned, the Legislation could legitimately be made deriving source of power from Entry 18 of List II i.e., `land' and Entry 20 of List III, i.e., `Economic and Social Planning'. A town planning law can legitimately include the acquisition of land, and its use for public purpose as a part of social and economic planning. What clause (jj)(a) does is only to demarcate the maximum extent to which land in the scheme can be utilised for various purposes. Subclause (iv) of clause (jj)(a) allows the authorities to provide in the scheme 15% of land for sale by Appropriate Authority, for residential, commercial or industrial use and as per subclause (b) of the said clause the proceeds of sale are to be utilised for providing infrastructural facilities. The entire impugned legislation is squarely covered by Entry 18 of List II on `land' and Entry 20 of List III on `Social and Economic Planning'. A law dealing with town planning can legitimately provide for allotment of certain percentage of land for public use and certain percentage of land to be acquired for sale by the authorities so that the sale proceeds may be utilised for providing better facilities as a part of social and economic development and planning. The criticism levelled on behalf of the petitioner that subclause (iv) of clause (jj)(a) is merely a device to augment revenue of the Appropriate

Authorities is not well founded. Clause (jj)(a)(iv) r.w. subclause (b) of the said clause requires that sale proceedings obtained from sale of reserved land would be utilised for public purpose. It is, therefore, not a law merely to raise money or funds by the authority. Clause (a) of subsection (1) of Section 91 has been amended by Gujarat Act No. 3 of 1995 to add word "otherwise" in the contents of the Section to include such sale proceeds obtained by the Appropriate Authority as part of its legal and legitimate fund to be used for development.

"Sec. 91. Fund of the appropriate authority.
(1) An appropriate authority shall have and maintain its own fund to which shall be credited -
(a) all moneys received by the authority by way of grants, loans, (advances, fees, development charges or otherwise;) (substituted by Gujarat Act 3 of 1995). (underlining for emphasis)

##. The arguments advanced on behalf of the petitioner is that the substitution of word "otherwise" in Section 91((1)(a) should be interpreted in the light of other words used in clause (a). We do not find any basis to hold that in clause (a) the sale proceeds obtained by the authority from sale of land reserved in the scheme, would not be covered by the expression "moneys received through source other than grant, loans, advances, fees and development charges". The word "otherwise" has been purposely introduced in clause (a) to cover all kinds of moneys which the Appropriate Authority might receive. The word "otherwise" in clause (a) has to be read in the light of other provisions of the Act including provision contained in subclause (iv) of clause (jj)(a).

##. For all the above reasons, we find no merit in the contention advanced on behalf of the petitioner that the impugned legislation is beyond legislative competence of the State Legislature.

II CONSTITUTIONAL VALIDITY UNDER ARTICLE 300-A AND ARTICLE 14 OF THE CONSTITUTION OF INDIA

##. On behalf of petitioners the second ground of attack is that the impugned legislation contained in clause (jj)(a) is arbitrary and unreasonable law and is not protected by Article 300-A of the Constitution. The first question, therefore, that arises on the ground urged is to consider whether the impugned legislation is arbitrary, unreasonable and violative of Article 14 of

the Constitution of India. As has been stated above while considering the ground raised on lack of legislative competence, the town planning scheme to be framed under Section 40 has been dealt with. Clauses (c) and (e) of subsection (3) contain provisions for providing various public facilities as a part of town planning. What clause (jj)(a) provides is prescribing certain percentages as maximum limit within which land can be allotted for different public purposes. Preparation and implementation of town planning inherently involves in its process making of new plots by amalgamation of plots, their reconstitution and exchange of lands, of the different land owners as a part of systematic town planning. Every town planning requires making provisions for roads, parks, open spaces and alike in order to improve the living conditions. Preparation of a town planning scheme and implementation, therefore, requires exchange of land by the land owners, reconstitution of plots and surrendering some lands by them for public use and facilities like parks, gardens, open spaces, roads etc. In the parent Act, there are detailed provisions contained in Chapter III which permit reconstitution of plots and vesting of title in the authority of certain lands for the purpose of planning (See Sections 45 and 48A). Chapter VI of the Act under the head "Finance" contains provisions like working out cost of the scheme in accordance with Section 77, calculation of `Increment' under Section 78, as a result of the appreciation of market value of the land on formation and implementation of a town planning scheme. Section 82 provides for payment of compensation in respect of `property or right injuriously affected' by the State and provides for determination of market value of the land for the purpose of payment of compensation on the basis of its value on the date of declaration of intention to make the scheme.

##. As the preparation and implementation of town planning scheme causes some injury or damage to the property of land owners and also in some cases correspondingly increases the value of the property of other land owners the basis for determination of compensation under the parent Act is different from the basis on which compensation is determined under the Land Acquisition Act. Merely because the mode and determination of compensation payable for deprivation of the land covered in a town planning scheme under the parent Act, is different from the mode of computation of compensation under Land Acquisition Act, it cannot be held that the relevant provisions concerning town planning is either unreasonable or arbitrary. While

considering challenge to the provisions of the parent Act it should not be forgotten that the right to property earlier guaranteed to a citizen by the Constitution is no longer available after deletion of clause (f) of Article 19(1). So also Article 31 which provided certain protection against compulsory acquisition of property is also no longer part of the Constitution on its deletion. It is true that the Article 300-A added to the Constitution, after deletion of Article 19(1)(f) and Article 31, does recognise right to property as a constitutional right and deprivation thereof is permissible only under an authority of law. There can be no quarrel against the proposition advanced on behalf of the petitioners that the law contemplated by Article 300-A should be a valid and reasonable law. The argument advanced on behalf of the petitioner, however cannot be accepted. Merely because under the impugned legislation on town planning the land owner who is deprived of his land is paid compensation on the basis of the market value of land as existing on the date of declaration of intention to prepare a scheme and not on the date of proposed acquisition of the property in accordance with the Land Acquisition Act, it cannot be held that the compensation paid is illusory and the law is unreasonable resulting in infringement of constitutional right of the land owner guaranteed under Article 300A of the Constitution.

##. Similar argument advanced on the provisions of Bombay Town Planning Act of 1955, which is predecessor of the parent Act, have been duly considered and repelled by the Supreme Court in two cases, State of Gujarat Vs.Shri Shantilal Mangaldas and others AIR 1969 SC 634 followed in Prakash Amichand Shah Vs. State of Gujarat and others AIR 1986 SC 468. The provisions of Bombay Town Planning Act 1955 were upheld by the Supreme Court despite the fact that Article 31 existed then in the Constitution.

##. After examining in detail the claim and the various provisions of the Bombay Act, which are substantially similar to the provisions of the parent Act under consideration before us, on the arguments advanced on behalf of the land owners that the compensation payable under the scheme is illusory compared to the compensation payable under the Land Acquisition Act, Supreme Court in the case of Shantilal (supra) observed thus:-

> "The method of determining compensation in respect of land which are subject to the town planning scheme is prescribed in the Town Planning Act. There is no option under that Act

to acquire the land either under the Land Acquisition Act or under the Town Planning Act. Once the draft town planning scheme is sanctioned, the land becomes subject to the provisions of the Town Planning Act, and on the final town planning scheme being sanctioned, by statutory operation the title of the various owners is readjusted and the lands needed for a public purpose vest in the local authority."

##. The argument advanced by the learned counsel for the petitioners in this group of petitions is that because of long passage of time between the date of declaration of intention to prepare scheme and the date of actual acquisition, the compensation payable on the market value obtaining on the date of declaration of intention to frame as scheme becomes wholly unrealistic and, therefore, violative of Article 300A. The above argument is negatived by the Supreme Court in the case of Shantilal (supra) by holding that:-

"Again the validity of the statute cannot depend upon whether in a given case it operates harshly. If the scheme came into force within a reasonable distance of time from the date on which the declaration of intention to make a scheme was notified, it could not be contended that fixation of compensation according to the scheme of Section 67 per se made the scheme invalid. The fact that considerable time has elapsed since the declaration of intention to make a scheme, cannot be a ground for declaring the section ultra vires. It is also contended that in cases where no reconstituted plot is allotted to a person and his land is wholly appropriated for a public purpose in a scheme, the owner would be entitled to the value of the land as prevailing many years before the extinction of interest without the benefit of the steep rise in prices which has taken place all over the country. But if Section 71 read with Section 67 lays down a principle of valuation it cannot be struck down on the ground that because of the exigencies of the scheme, it is not possible to allot a reconstituted plot to an owner of land covered by the scheme."

##. Even on facts the argument that the compensation payable under the scheme for the land acquired is unrealistic and illusory is baseless. As is pointed out by Addl. Advocate General, the declaration of intention for framing the claim was published on 21-1-1999. There

is a clear stand taken up on behalf of the State that compensation that would be payable would be on the basis of market value as on 21-1-1999. The entire argument, therefore, that because of long passage of time between the date of declaration of intention of framing a scheme and the date of actual acquisition the compensation payable would be illusory, is without any foundation on facts.

##. A similar contention, based on the ground of payment of unrealistic or illusory compensation and not in accordance with Land Acquisition Act, was rejected in the case of Prakash Amichand Shah (supra). The earlier decision of Supreme Court in the case of Shantilal (supra) was relied and it was observed:

"In order to appreciate the contentions of the appellant, it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a Town Planning Scheme and making provisions for future development of the area in question. The various aspects of a Town Planning Scheme have already been set out. On the final town Planning Scheme coming into force under Section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the Land Acquisition Act, 1894 have to be set in motion either by the Collector or by the Government."

##. Respectfully following the decision of Supreme Court in the case of Shantilal (supra) and Prakash Amichand Shah (supra), the contention advanced on behalf of the petitioners cannot be accepted that the compensation payable under the parent Act in the course of preparation of town planning scheme is unrealistic and unreasonable and therefore, it is violative of Article 300A of the Constitution. Such an argument was repelled by the Supreme Court in the cases (supra), even though at the relevant time Article 19(1)(f) and Article 31 were part of the Constitution guaranting right of property to a citizen. There is stronger reason to reject such

contention after deletion of clause (f) from Article 19(1) and deletion of Article 31 from the Constitution. Article 300A does not guarantee that a citizen in the event of deprivation of his property would be paid fair/adequate compensation in accordance with the provisions of Land Acquisition Act or any other similar law. The provisions of the Bombay Act comparable with the parent Act were considered by the Supreme Court and upheld. The provision of town planning scheme provide a different mode of determination and payment of compensation because the process involved in preparation of a scheme requires amalgamation and or reconstitution of plots resulting into appreciation of the value of some of the plots. We, therefore, hold that merely because, compensation payable for the land is not in accordance with the Land Acquisition Act but only in accordance with the provisions of the parent Act, the provisions of the latter of Act cannot be held to be arbitrary, or unreasonable or violative of Article 300A of the Constitution.

III ON THE INTERPRETATION OF SECTIONS 20 AND 40 OF THE ACT AND THEIR CO-RELATION AND CONJOINT OPERATION

##. As discussed above, we have rejected the grounds of challenge to the impugned legislation based on alleged want of legislative competence and violation of Article 300A and Article 14 of the Constitution. The submissions made by the opposing counsel on the interpretation of the provisions of the Act, particularly Sections 20 and Section 40 of the parent Act, however, deserve due consideration. Section 20 of the Act permits acquisition of land either under an agreement with the land owner or in accordance with the Land Acquisition Act, but, acquisition is to be made within specified period and for specified public purposes mentioned in clauses (b), (d), (f), (k), (n) and (o) of subsection (1) of the said Section read with subsection (2) of Section 12. The above mentioned clauses of subsection (2) provide that a `development plan' may include proposals for `designation' and `reservation' of land for various public purposes. But, these lands, so designated or reserved for various purposes, if not acquired within the specified period under subsection (2) of Section 20, the `designation' or `reservation' of the land would lapse. The land so designated or reserved for the purposes mentioned in the above mentioned clauses of subsection (2) of Section 12 if are not acquired by agreement or under Land Acquisition Act and in respect of such land the designation or reservation has lapsed, the question

is whether the same land so designated or reserved can again be reserved by earmarking it for allotment for various public purposes mentioned in impugned clause (jj)(a)(i) to (iv) of Section 40(3) of the Act.

##. There is sufficient force in the contention advanced on behalf of the petitioners that the land which was designated and reserved for specified purposes under above mentioned clauses of Section 12(2) and has not been acquired under the Land Acquisition Act or any agreement with the land owner and its reservation/designation has lapsed, the same land by including it in the town planning scheme under the impugned clause (jj)(a), cannot be reserved, to nullify the effect of Section 20(2). The contention advanced on the interpretation of Section 20 and 40 of the Act, on behalf of the petitioners finds support from the provisions contained in Section (1) of Section 40 which read thus:

"40.Making and contents of a town planning scheme.

(1) Subject to the provision of this Act or any other law for the time being in force, the appropriate authority may make one or more town planning schemes for the development area or any part thereof, regard being had to the proposals in the final development plan, if any.

(underlining for supplying emphasis)

##. The opening part and the latter part of subsection (1) of Section 40 make it evident that a town planning scheme to be prepared under subsection (2) and (3) of Section 40 has to be with due regard to the final development plan and the proposals made therein. Where the land reserved or designated in the `final development plan' is dereserved due to non-acquisition of the same within the specified period such land cannot again be reserved in the town planning scheme. Any other interpretation of provisions of Section 40 would render Section 20 totally ineffective and otiose. Under Section 20, the land reserved or designated has to be acquired either under agreement or under Land Acquisition Act on payment of compensation payable under the Land Acquisition Act. The land which was reserved in the final development plan, but, within the outer limit specified in Section 20, could not be acquired for want of financial capacity of the Authorities cannot again be rereserved indirectly and acquired under a town planning scheme framed under Section 40 by payment of compensation only on the market value obtaining on the date of declaration of intention of preparation of a scheme under

Section 41 and 43 r.w. Section 82 of the parent Act. The land which could not be acquired under Section 40 for want of capacity to pay compensation under Land Acquisition Act, cannot be allowed to be acquired indirectly on payment of less amount of compensation based on market value of the land on the date of declaration of intention to prepare scheme under Section 82 read with Sections 41 and 43. That such was not the intention of the law is apparent from the provisions of subsection (1) of Section 40 quoted above. Any town planning scheme prepared under Chapter V, permitting allotment and acquisition of land, has to be consistent with a `final development plan' prepared under Chapter II of the parent Act. Any other interpretation would result in conflict between Section 20 concerning preparation of `final development plan' and Section 40 `town planning scheme'.

##. The other limb of the argument advanced that the State has shown no justification in its affidavit-in-reply for increasing the percentage of lands to be reserved or allotted in the scheme for various public purposes, has little force because the justification for the impugned legislation is to be found in other provisions of the Act itself. Non-filing of any affidavit in reply containing justification for prescribing various percentages of reservation of lands would not invalidate the legislation under consideration. As held in the case of Shiv Theatre Vs. Government of Tamil Nadu JT 1992 (2) SC 312, `validity of legislation has to be judged on legal and constitutional grounds and not on the basis of any affidavit filed by the State. Court alone can interpret the intention of the Parliament or the State Legislation. An interpretation placed by the State in their reply affidavit is not of much consequence'.

##. We have examined the relevant provisions of the parent Act as discussed above. They are found comparable with the provisions of Bombay Act of 1955. We have also upheld the impugned legislation contained in clause (jj)(a) introduced by amendment to the parent Act. The law contained in clause (jj)(a) of subsection (3) of Section 40 is a valid piece of legislation but it is operative only in respect of land not already dereserved or kept out of designation as a statutory effect of non-acquisition within specified period under Section 20(2) of the Act. In preparation of a town planning scheme in accordance with subsection (3) read with its various clauses including clause (jj)(a), and its subclauses, the land dereserved or which is no longer to

be taken as designated under Section 20(2), will have to be kept out of purview. If such land so dereserved or free from designation under Section 20, is proposed to be reserved in a town planning scheme, in the percentages mentioned in various subclauses of clause (jj)(a), such land (referrable to Section 20(2) of the parent Act) will have to be acquired for a specified public purpose and only in accordance with the provisions of Land Acquisition Act and on payment of market value of the land in accordance with the said Act. In coming to the above conclusion on the interpretation of Section 40 and 20 and on their conjoint operation, we find some support from the provisions contained in Section 48-A which provide for vesting of lands in the Authorities for purposes specified only in clauses (c), (f), (g) and (h) of Section 40 and not those mentioned in subclauses of clause (jj)(a) of Section 40(3). The relevant provision Section 48-A(1) reads thus:-

"Sec.48-A. Vesting of land in appropriate authority.

1) Where a draft scheme has been sanctioned by the State Government under subsection (2) of Section 48, (hereinafter in this Section, referred to as `the sanctioned draft scheme') all lands required by the appropriate authority for the purposes specified in clause (c), (f), (g) or (h) of sub-section (3) of Section 40 shall vest absolutely in the appropriate authority free from all encumbrances."

The other relevant provision which supports the interpretation placed by us on the two Section is to be found in Chapter VIII in Section 107 which reads thus:

"Sec.107. Compulsory acquisition of land needed for purpose of town planning scheme or development plan.

Land needed for the purposes of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1984 (I of 1984).

##. These provisions are a pointer to the legislative intent that lands, other than those liable to be included in the scheme, and for which compensation is payable under the Scheme in accordance with Section 82 read with Section 41 and 43 of the Act, may be acquired for a development plan or town planning scheme, but, only in accordance with the Land Acquisition Act.

##. This is our conclusion on the interpretation of Sections 20 and 40. It is supportable on the over all scheme of the parent Act and the various chapters and sections discussed above. But this interpretation, as placed by us, on the provisions of the Act, does not in any manner, render clause (jj)(a) of subsection (3) of Section 40 an invalid piece of legislation. Clause (jj)(a) mentioned above can validly operate in respect of land not covered by Section 20(2) of the parent Act.

IV. CHALLENGE TO VALIDITY OF SECTION 40(3)(jj)(a)(iv)

##. Before concluding one of the grounds or on the question of validity of sub-clause (iv) of clause (jj)(a) of sub-section 3 of Section 40 also requires to be decided. As has been stated above, the said sub-clause (iv) permits the Authority to reserve 15% of land to be utilised for sale by the Authority for residential, commercial or industrial use.

##. In the earlier paras of our judgement, we had already pointed out that clauses (c)(e)(f)(g)(h) contain provisions enabling the authorities to make provisions in the Town Planning Scheme for various public facilities like roads, open spaces, gardens, recreation grounds, school, market, water supply, lighting, drainage etc. What the impugned clause jj(a) has done is to provide definite percentage as outer limits for reservation of land for various public purpose and facilities. Sub-clauses i to iv of clause jj(a) contain different percentages for reservation of land for public purposes. We have also pointed out that original clauses (jj) which was introduced by Gujarat Amendment No.4 of 1986 and is now substituted for jj(a) by impugned Act No.2 of 1999 had made a provision for allotment of 10% of land or such percentage as nearly thereto as possible for the purpose of sale for residential, commercial or industrial use. By the impugned substituted jj(a)(iv), the Legislature has merely clarified that the said reserved land will be utilised for sale by Appropriate Authority. The proviso thereunder read with clause (b) of clause jj(a) contains the legislative intent for reservation of 15% of land for sale by Appropriate Authority. It reads:-

> "jj(a)(b) proceeds from the sale of land referred to in para IV of sub-clause (a) shall be used for the purpose of providing infrastructural facilities."

The above quoted sub-clause (b) indicates the intention of the provisions to be contained in a Town Planning Scheme. We have quoted the extracts and observations from the judgements of the Supreme Court in which Bombay Town Planning Act and its provisions were upheld. The Town Planning Scheme in its implementation inherently requires plotting, re-plotting, reconstitution of plots, division of plots, laying out of roads and change of land use. For proper plan and Town Planning scheme, it is necessary to provide public facilities. In the process of achieving the object of Town Planning, certain percentage of land is required to be reserved for providing public facilities. The reservation of 15% of land to be utilised for sale by the Authority is not for only raising Revenue or fund of the Authority. The provision of reservation is to earmark a certain percentage of land for public facilities to be provided to the residents living within the area of the Town Planning Scheme. This being a provision necessary for Town Planning, we are not prepared to accept the argument that the provision is merely a money making provision and beyond the legislative competence of the State Legislature. The provision of reservation of land in a reasonable limit to for utilisation by sale by the Authority for providing infrastructural facilities, is a subsidiary or ancillary provision necessary for preparation and implementation of a Town Planning Scheme and does not suffer from any constitutional infirmity or lack of legislative competence. The challenge therefore of Para (iv) or subclause (iv) of clause jj(a) also therefore fails.

##. Having thus considered all the grounds urged on behalf of the petitioners, we record our conclusion thus:

The impugned legislation contained in clause (jj)(a) of subsection (3) of Section 40 is a valid piece of legislation and the challenge to the same by the petitioners based on Article 14 and Article 300A of the Constitution fails.

The petitions partly succeed on the interpretation of the provisions of Section 40 read with Section 20 of the Act. The contention advanced on behalf of the petitioners is accepted that the impugned clause (jj)(a) of subsection (3) of Section 40 is operative for the land other than the land mentioned in subsection (2) of Section 20 of the Act.

The group of petitions thus stand disposed, but, without any order as to costs.

The Civil Applications shall also stand accordingly disposed of.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

[sndevu]